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416--3

January 28, 1958

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CONCORD, N.H.

His Excellency, Lane Dwinell
Governor of New Hampshire
Concord, New Hampshire

Dear Governor Dwinell:

In further amplification of the question contained in the letter from Maurice F. Devine to you of December 23, 1957, and by you forwarded to this office for opinion on December 27, 1957, we advise as follows:

Mr. Devine mentions acceptance of the new Memorial Union Building at the University of New Hampshire in relation to the problem before the University Trustees of whether to place fire and casualty insurance upon this building. This problem is emphasized in view of the provisions of RSA 9:27, which prohibit use of funds of the State for providing for insurance of property owned by the State against loss by fire or other casualty except as specifically authorized by law; and RSA 4:19, which in substance authorizes the Governor and Council to pay for damages by fire or otherwise to any property belonging to the State from money in the treasury not otherwise appropriated.

In my opinion the Memorial Union Building, once accepted by the University, becomes the property of the State. Once officially accepted as State property the source of funds for its acquisition and construction is not believed to be of significance. University money is within the definition of funds of the State or any department or institution thereof and in the same sense as used by the New Hampshire Supreme Court in St. Regis Co. v. Board, 92 N.H. 164, at 167:

"... Although nominally created by the legislation as a corporation, its status as a separate entity is only an illusory one of words."

The problem of whether property owned by the State is at the time of casualty or fire devoted to a use which does not necessarily

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involve a State function remains. In this regard it is my opinion that so long as the building remains the property of the State of New Hampshire, the provisions of RSA 4:19 apply as do the provisions of RSA 9:27, prohibiting the use of State funds for insurance on this building.

Insofar as any portion of the opinion of the Deputy Attorney General to Mr. Devine of March 13, 1956 appears inconsistent with this opinion, this opinion is controlling, in which the Deputy Attorney General concurs.

Respectfully,

Louis C. Wyman
Attorney General

Corres. with Mr. Devine
attached hereto